
IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 375 of 2000
in
SPECIAL CIVIL APPLICATION No 2489 of 1999

WITH
CIVIL APPLICATION No.6568 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and

Hon'ble MR.JUSTICE R.R.TRIPATHI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

HARMISTA A CHAUHAN

Versus

DEALER SELECTION BOARD (AHMEDABAD)

Appearance:

MR KS JHAVERI for Appellant
Mr.Nirupan Nanavati Senior Counsel with
Mr.H.C. Buch for respondnet no.3 (Caveator).

CORAM : MR.JUSTICE M.R.CALLA
and

Date of decision: 30/08/2000

COMMON ORAL JUDGEMENT : (Per M.R. Calla, J.)

This Letters Patent Appeal is directed against the judgment and order dated 28th July 2000, whereby the Special Civil Application has been dismissed. Applications had been invited on 31.12.1997 for awarding LPG Distributorship of Indian Oil Corporation at Palej, District Bharuch. Amongst the applicants, who applied for this dealership were the appellant herein - claiming herself to be a physically handicapped woman, and respondent no.3, as a widowed woman. Respondent no.3 was selected for grant of the aforesaid dealership and the letter of intent was issued on 4.3.1999 in her favour by the Indian Oil Corporation. The present appellant feeling aggrieved from this decision of the respondent Indian Oil Corporation and the Dealer Selection Board, filed Special Civil Application on 7.4.1999. Affidavit in reply dated 15.7.1999 was filed by the Senior Area Manager, Indian Oil Corporation Ltd. Another affidavit in reply dated 15.7.1999 was filed by Non Member Secretary for Dealer Selection Board. Yet another affidavit in reply dated 9.9.1999 has been filed by the contesting respondent no.3. An affidavit in rejoinder dated 4.10.1999 was filed by the petitioner. The learned Single Judge rejected the Special Civil Application by his judgement and order dated 28th July 2000. Aggrieved from the said judgement, the present Letters Patent Appeal has been filed. There is no dispute that respondent no.3 is a widowed woman and the present appellant is a physically handicapped woman. Therefore, both were entitled to preference accordingly. However, the basic grievance which has been raised by the learned counsel for the appellant is that respondent no.3 did not make correct disclosure of her income in the application and thus, firstly her application was liable to be rejected on the ground that she had not disclosed the correct facts. Secondly the case of the appellant is that had respondent no.3 disclosed her correct income, it would have been found that the income of respondent no.3 was higher than that of the appellant and in that case the appellant could have been found to be preferable for this dealership as against the respondent no.3. The appellant has also submitted that brother of respondent no.3 was already holding an agency and thus, the appellant was not entitled for this distributorship in terms of the notice inviting applications through the advertisement.

2. We have heard learned counsel for both the sides and have gone through the pleadings of the parties as referred to hereinabove and the impugned judgement and order dated 28th July 2000. The learned Single Judge has dealt with the submissions made before him in detail. We broadly agree with the view taken by the learned Single Judge while rejecting the Special Civil Application and the reasons given by him in para 13 of the judgement. The learned Single Judge has recorded that respondent no.3 was ill advised in mentioning the income against the column of professional income and residual income when she could have easily mentioned her income against the head of salary, interest, etc. The learned Single Judge has also mentioned in para 12 that respondent no.3 did not mention any amount in column of gross salary though her salary income was Rs.1350/- per month till she was in service with the primary school in question, that is upto 28.12.1999 and further that it is also true that respondent no.3 did not disclose her income from interest on Fixed Deposits, but mentioned in the Income Declaration that her professional income was Rs.15,000/and her other income was Rs.20,000/-, aggregating to Rs.35,000/-, and that agricultural income was under a serious dispute. The learned counsel for respondent no.3 has invited our attention to the averments made in paras 6 and 7 of her affidavit in reply dated 9.9.1999 and has submitted that the husband of respondent no.3 was working as Talati in the District Panchayat, Bharuch, who passed away on 10.3.1991. Since then she was receiving family pension. It has been submitted in para 7 that she had been serving as a teacher in Pioneer School and that her salary was only Rs.1350/- per month as she was only untrained teacher. Thus, the income of respondent no.3 out of the salary comes to Rs.16,200/- per annum and she was receiving a sum of Rs.19,872/- as family pension amount for the service which had been rendered by her husband, who died in 1991. Thus, the income comes out to be Rs.36,072/- per annum. Learned counsel for respondent no.3 has clarified that instead of mentioning the income of the pension separately, she mentioned a sum of Rs.20,000/against the column of income from other sources. In fact what she meant by mentioning Rs.20,000/- against other sources was the very income which she was receiving as family pension and therefore, there was no question of income from any other source. It has also been submitted that the interest which respondent no.3 was getting against Fixed Deposits or from Saving Bank account was not a regular or recurring income in the sense that it is to last only till the

period of deposit and interest on Savings Bank account is variable and depends on the amount in the account which cannot be constant. According to respondent no.3, in fact there was no question of any concealment or false statement or incorrect disclosure on the part of respondent no.3. We also find from the averments of the appellant herself that her income was Rs.44,000/- per annum and her husband's income was rs.50,000/- per anum.

3. In para 9 of the affidavit in reply dated 9.9.1999, respondent no.3 has also clarified the position about the agricultural income by saying that in fact the agricultural land in village Juned, Taluka Vagra, District Bharuch is an ancestral property. It has also been clarified that on account of death of her husband, her name has been shown in village form 12, but she did not enjoy fruits of this land as there are many claimants as heirs for this small piece of land and further that according to Muslim Personal Law, a widow is not entitled to ancestral property of her husband in case the husband dies prior to her father in law. The names of other heirs have been given out. It was given out that the father in law is still alive. In such circumstances there is no question of any agricultural income.

4. In the facts and circumstances of this case, if respondents nos.1 and 2 did not find it a proper case to reject the candidature of respondent no.3 and she has been selected it is not possible for this court to go into the correctness of such decision arrived at by respondents nos.1 and 2 after simultaneous consideration of the competing claims of the appellant, respondent no.3 as well as other candidates. The appellant's grievance is that respondent no.3 could not have been selected had her income not been taken to be lesser than that of the appellant, but in light of the facts narrated hereinabove, the grievance cannot be said to be a legitimate grievance. Even if the income of respondent no.3 is clubbed with the amount of family pension it comes out to be Rs.36,072/- per annum whereas the income of the appellant herself was Rs.44,000/- per annum and in case the same is clubbed with the income of her husband, it comes to Rs.92,000/-. Be that as it may, we do not find that there is any such violation in granting the dealership to respondent no.3, which warrants interference by this Court under Article 226/ 227 of the Constitution of India. Even if the income of respondent no.3 is taken to be as alleged by the appellant, it remains to be short of Rs.2 lacs and therefore, it does not impinge upon her eligibility for dealership. The ground that the brother of respondent no.3 was having an

agency is wholly misconceived inasmuch as in terms of the advertisement itself it is written that this clause will not be applicable in case of women, if brother or brother's wife is having such an agency.

5. We, therefore, find ourselves in agreement with the view taken by the learned Single Judge and the reasons given by him in the judgement and do not find it a fit case for any interference. This Letters Patent Appeal has no force and the same is hereby dismissed. Ad interim relief dated 9.4.1999 which had been granted by the learned Single Judge and which was continued upto 7.8.2000 by the learned Single Judge while rejecting the Special Civil Application on 28th July 2000 and which was further extended by the Division Bench in this Letters Patent Appeal by an order passed on 7.8.2000 in Civil Application No.6568 of 2000 and which has been continued even thereafter upto now stands vacated and Civil Application No.6568 of 2000 is also rejected accordingly.

6. Learned counsel for the appellant has prayed that this order which we have passed today as above may be stayed for some time as the appellant intends to challenge this order. The interim order which was passed in favour of the appellant by the learned Single Judge way back on 9.4.1999 has continued upto now and respondent no.3 who is a widowed lady and who was granted dealership way back in April 1999, and who had also gave up her job after grant of this dealership is jobless. In the facts and circumstances of this case, we find that the acceptance of prayer made by the appellant for stay of this order would not enure any immediate benefit to appellant and would only add to the hardship of the respondent no.3, who is suffering unemployment. In the facts and circumstances of this case the prayer as has been made for stay of this order is hereby declined.

(M.R. Calla, J.)

30th August 2000 (Ravi R. Tripathi, J.)

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